

Approved

**STATE ADVISORY COUNCIL ON THE
EDUCATION OF CHILDREN WITH DISABILITIES**

**March 2, 2007
Carmel Educational Service Center
Indianapolis, IN**

ADVISORY COUNCIL MEMBERS PRESENT:

B. Marra, D. Schmidt, , G. Bates, J. Swaim, S. Tilden, K. Farrell, J. Swiss, J. Nally, R. Kirby, M. Johnson, C. Shearer, D. Downer, , C. Endres, , K. Mears, M. Ramos, B. Lewis, J. Hammond, R. Burden, C. H. Hansen

ADVISORY COUNCIL MEMBERS NOT PRESENT:

S. Beasley, B. Henson, L. Teninty, B. Kirk, D. Geeslin, T. Wyatt

DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:

P. Ash, N. Brahm, B. Reynolds, K. Bassett, B. Alyea, S. Scudder

GUESTS:

S. Knoth

VISITORS

Loui Lord Nelson (R.A.I.S.E.), Kathryn A. Lee (Indiana Civil Rights Commission), Mary Jo Germani (ISHA), Susan Lockwood (IDOC), Pat Pierce (NISEC), Lynn Gosser (Grant Co. Sp. Ed. Coop.), Margaret Jones (Parent), Denise Arland (Parent), Alexandra M. Curlin (Curlin Law Office), Dawn McGrath (ICAN Project)

INTERPRETERS:

Amy Evans, Amanda Park

MEETING

D. Schmidt opened the meeting at 8:55 a.m.

MINUTES

The minutes from the February 2, 2007, meeting, were approved with no amendments.

BUSINESS

Meeting Dates, Times and Locations

B. Marra stated that it would be best at this time for the meetings to stay at the Carmel Clay Educational Service Center. B. Marra stated that the meeting times will start at 8:30 a.m. After a draft of Article 7 is completed, new locations and meeting times may be discussed.

Timeline for Article 7

B. Marra stated that he would like to have a complete draft of the revised Article 7 by the end of June. B. Marra added that IDOE is working with ISEAS and Butler University to set up a symposium regarding the draft on August 1st and 2nd, 2007, at Butler University. After the symposium, the Division will hold public meetings, with the goal of taking a draft of Article 7 to the Indiana State Board of Education in November of 2007. D. Schmidt asked if it would help if SAC members attend the public meetings. B. Marra replied that this would be good. Minutes will be taken at the public meetings, but it is good to hear the comments live.

Member update

D. Schmidt stated that the newest member of the council is Thelma Wyatt.

PUBLIC COMMENT (Audience comments, if any)

No comment at this time.

ARTICLE 7 DISCUSSION

RULE 20 PROGRAM PLANNING AND EVALUATION

511 IAC 7-20-1: Comprehensive plan

B. Marra distributed documents setting forth requirements for comprehensive plans. B. Marra stated that the blue document sets forth the current

requirements, and the white document sets forth revised guidelines for discussion. The blue document outlines the three types of comprehensive plan entities: (1) a Cooperative; (2) a Joint Service and Supply, where the school corporation becomes the local education agency (LEA) for the special education planning district. They have the fiscal responsibility for hiring and reallocating personnel; and (3) the interlocal agreement, where each LEA stands by itself and hires and controls fiscal responsibilities for the school corporation within the special education planning district.

B. Marra referred to the mark-up language. He asked the SAC to consider whether it is appropriate to approve changes in a cooperative that do not affect the actual comprehensive plan. B. Marra said that we will be asking to see the joint services and supply agreement, in addition to the comprehensive plan.

P. Pierce spoke to the Council with regard to the Northwest Indiana Special Education Cooperative (NISEC) and its history. There are 10 school districts that are a part of the NISEC and the president from each of the local districts is on the board of the NISEC. The NISEC meets monthly, pays all the bills for the cooperative, and hires staff. B. Marra inquired as to how they bill their speech-language pathologists. She said that they pay their initial bills first, then staff, and then the services per student. D. Schmidt asked if it was district specific. P. Pierce said yes.

B. Lewis indicated that in his planning district, the school psychologists and therapists are hired by the cooperative, but the superintendent hires the special education teachers. B. Lewis added that there are some shared programs for low incidence areas. D. Schmidt concurred that this was similar to his school corporation's service delivery set-up.

Discussion ensued with regard to when planning districts should come before the SAC. D. Schmidt said that basically we want to confirm that the services to children will be in place. If the services do not change, then we just need to assure that those services will not affect the child. B. Lewis concurred that if the quality does not change, then we should not have to get involved. B. Lewis reminded the SAC that we also need to consider the Virtual Cooperative. R. Burden said that he doesn't feel the need to have them come to the Council, but if it doesn't work out, we should have a check point to have them come to us if the assurances are not being met. D. Schmidt asked if that would be a monitoring issue. B. Marra said yes. C. Shearer asked how we know if the more intense services delivery needs are being met. B. Marra described the difference between high incidence and low incidence disabilities. D. Downer stated that her concern is going down that line of management. She feels that if they come to us with a plan, we have to make sure that they are meeting their assurances. We need to have a monitoring system, to hold entities accountable for failing to meet assurances. K. Mears inquired as to what the consequence would be? B. Lewis gave the example of adequate yearly progress (AYP), and school

corporations that would be taken over by the DOE due to lack of adequate progress. B. Marra said that there are districts that are approaching this sanction due to lack of progress. B. Marra asked again for discussion. K. Farrell asked for clarification: is the Article 7 language "policy" and the language in the handouts "procedures"? B. Marra said yes, and that the planning district must review the comprehensive plan annually, but need only submit it to the SAC a revised comprehensive plan when there are significant changes to the plan. R. Burden referred back to K. Mears question with regard to consequences. B. Marra said that they may reduce their Part B funds. D. Schmidt asked if that was effective. B. Marra said yes, but he feels that it also penalizes the children. S. Tilden stated that we are not set up to micro manage. The role of SAC should be to get feed-back from staff or parents to make sure that entities are complying with comprehensive plans.

B. Lewis asked if we are advisory to the IDOE or advisory to the districts. B. Marra stated that SAC is advisory to the IDOE. K. Farrell stated that she supports the language as written and that she agrees with B. Lewis that we are to advise the IDOE, not the individual schools. K. Farrell moved to accept the comprehensive plan language under 511 IAC 7-35-1. J. Swaim stated that the SAC should be reviewing proposed changes to plans when the changes could affect whether children receive a FAPE. R. Burden asked for clarification and then asked to include language that if there were substantive changes, then the comprehensive plan need to be reviewed. B. Marra asked how substantive would be defined. D. Schmidt asked whether in the past the Division had asked to review all comprehensive plans. K. Farrell stated that in the rule, the comprehensive plans should be revised annually. B. Lewis indicated that he prefers the blue procedural document over the language in Article 7. K. Mears concurred that it is much more specific. B. Marra stated that they will work on incorporating the language. K. Farrell called the question to accept the amended language with proposed revisions from the blue document. C. Endres seconded.

12 Approved; 0 Opposed; 4 Abstained.

RULE 29 DISCIPLINE PROCEDURES

N. Brahm discussed the proposed language on discipline. N. Brahm referred to a flowchart produced the by the Office of Special Education Programs (OSEP) that was distributed at the meeting.

S. Tilden referred to the code of school conduct and how objective that might be. How does the school define the violation? B. Marra said that the school makes the judgment call by working with staff and looking at data to make better decisions. Most schools have a booklet that includes the code of conduct and each student is required to sign off that they have received their copy. B. Lewis asked if a student with an IEP would bring a weapon, is it the norm that the student would return to the school setting. B. Marra said that most students,

whether or not they have a disability, are removed for a year. The student receives services, but not in the school setting. B. Marra referred to L. Teninty's concern that the school gets 10 "free days" to suspend a student. B. Marra stated that this language has been in place since 1997. N. Brahm added that the parent can always reconvene a case conference committee (CCC). R. Burden stated his concern that parents do not understand that they can reconvene the CCC to either re-work the IEP or develop a behavioral intervention plan (BIP). C. Endres asked what happens to the child when a parent wants to reconvene, because the CCC is not going to take place that day. B. Marra said that the behavior would have to be looked at by the school before the CCC can convene.

M. Johnson referred to an EH student that is showing behavior that is dangerous to himself and staff. The child was put in a half day setting then moved to a 2 hour per day setting. Homebound was suggested, but the parent did not agree. She said that the school is trying to make the best placement for the child, but the parent is not in agreement what should be done in this situation. K. Farrell stated that discipline should be considered on a case by case basis. However, administration has the role to take action against children that are going to be at risk to themselves and others. D. Downer agreed with K. Farrell, but said that in M. Johnson's situation, the school should pay for the hearing, and the family should be allowed to sign or refuse to sign the IEP. She noted that the parent bears the cost of lost work time. C. Shearer asked if we had any data pertaining to removal of a child for 10 days. C. Shearer indicated that her work on a current parent survey demonstrates a need for further training on manifestations determinations (e.g., the criteria).

N. Brahm discussed the changes in Sec. 1 (a). The way that the Indiana Code defines suspension is only a part of what the federal definition of removal encompasses. Therefore, the proposed language for this rule has been aligned with the federal language, containing the word "removal" throughout the section (in lieu of suspension). J. Swaim was concerned with the definition of "removal." K. Farrell stated that if the rule is read in its entirety, it is easier to understand. J. Swaim suggested using the language "removed from the school." C. Endres understands the language to mean that the child is actually being removed from the building. R. Burden said that translation may be lost.

J. Nally stated that while the discussion has been good, the changes made by the SAC make the section more difficult to understand. The more words that are added the harder, it will be to understand.

J. Nally motioned to accept the original proposed language with the changes 1 (a) – (c). B. Lewis seconded. C. Endres asked if the citation should be 511 IAC 44-1 (a) instead of (b). N. Brahm confirmed that it should be (b).

J. Nally confirmed motion to accept language with amendments. B. Lewis seconded.

16 Approved; 0 Opposed; 0 Abstained.

N. Braham discussed (d). R. Burden stated that he agrees with (d) and (e) but questioned (f) (2), how the teacher would be selected. N. Brahm said that this is the language contained in the federal regulation, and read from the comments to the federal regulations. R. Burden also stated concerns with the language “progress appropriately.” He prefers the language as it was before. Discussion ensued. N. Brahm again read from the comments to the federal regulations regarding the language, and why it had been changed.

B. Lewis moved that 511 IAC 44-1 section (d) and (e) be accepted as written. J. Swaim seconded.

16 Approved; 0 Opposed; 0 Abstained.

Discussion ensued with regard to section (f) (1) and (2). K. Mears asked if the issues were the same as previously. K. Farrell said that the responsibility is to the child and what is appropriate. R. Burden stated that the language seem to allow for a lower standard of assurance. C. Endres stated with regard to the McKinney Vento Act, kids were being removed because of the enrollment rule, and the federal rule was changed to redefine enroll. If you look at the whole rule, there are checks and balances in the rule for this language. The IEP is still in place. G. Bates said that in his experience, expelling a student makes a difference in the types of services that are received. Students still receive services, and their goals are being met. However, expelled students’ days are not replicated in content or time.

K. Farrell motioned that (f) be approved as presented under 511 IAC 44 section (f). J. Swiss seconded.

11 Approved; 6 Opposed; 0 Abstained.

Discussion ensued about 511 IAC 44 (g) (h) (i). B. Lewis asked with regard to (i), if there would always be a teacher of record. B. Marra replied yes. R. Burden asked how this is determined at 511 IAC 44-1(i). N. Brahm referred to the comments to the federal regulations. The comments state that schools should be provided broad flexibility in determining which teacher is selected. C. Endres asked whether a parent can request that a certain teacher be present at a CCC meeting. D. Schmidt indicated that it is up to the school. K. Farrell suggested that Article 7 keep the current language requiring the special education teacher, because this teacher would have more knowledge of the behavior of the child. K. Farrell’s concern was how to ensure that the selected teacher was the most appropriate. Discussion ensued. B. Lewis said that there should be a way of ensuring that the teacher attending the meeting is not just the first available, but

someone who actually knows the student. B. Marra suggested changing the language to be “at least one”

Bret Lewis moved to accept 511 IAC 7-44-1 (g), (h), (i) (j). K. Mears seconded.

14 Approved; 1 Opposed; 1 Abstained; 1 Absent

N. Brahm discussed 511 IAC 7-44-1 (k) and (l). N. Brahm said subsection (k) clarifies that the public agency determines, on a case-by-case basis, whether a pattern of removal constitutes a change of placement. A CCC may consider any unique circumstances when making this decision.

M. Johnson asked with regard to (l), if this occurs within the 10 days. N. Brahm said that it would occur on the 11th day. You would have a CCC to determine change of placement. R. Burden said that he prefers the CCC, as opposed to the public agency, deciding whether pattern of removals constitutes a change of placement. K. Farrell noted that this would require a CCC meeting. Discussion ensued.

K. Farrell said that she feels that she is fine with the language in subsection (k), but prefers that subsection (l) use the term “may” as opposed to “should.” R. Kirby said that she believes there is a difference between CCC and public agency. When you say CCC, it gives the parent a voice. K. Farrell said that the current language has not impacted a change.

R. Burden made motion to amend language to read case conference committee, which was seconded by R. Kirby.

K. Farrell asked for clarification on when she has to convene a CCC. When is the school to convene that committee? G. Bates concurred that this can really slow down the process as you cannot typically get a CCC convened immediately. This will greatly impact the time and eventually services for the child. K. Farrell indicated that this change would require a CCC meeting to determine whether the removals constitute a pattern (and therefore a change of placement), and if a pattern exists, another CCC meeting to conduct the manifestation determination. J. Nally expressed a concern that we are inadvertently stretching out the timeline, which is in direct contradiction to the intent of the federal language.

K. Farrell called for a vote.

6 Approved; 10 Opposed; 0 Abstained.

K. Farrell moved to accept the proposed language for 511 IAC 7-44-1(k), with one change: the words “public agency” should replace “principal or his/her designee.” The motion was seconded by C. Endres. G. Bates asked for clarification on how this is different than the CCC. It could be the teacher of

record, guidance counselor, social worker, etc. M. Johnson asked for clarification as to whether this is still a sole individual making the determination or is it a group. N. Brahm noted that the term “public agency” can mean more than one person, or a single person, whereas the language “principal or principal’s designee” would mean one person. It would be better to use the term “public agency” because charter schools and schools within the Department of correction do not have principals.

M. Johnson called the question.

11 Approved; 4 Opposed; 1 Abstained.

R. Burden moved to amend 511 IAC 7-44-1(l) to change “principal” to “public agency” and “may” to “should”, and add the language that N. Brahm suggested. Seconded by M. Johnson. C. Endres asked to make a friendly amendment to “shall” instead of “should.” Seconded by S. Tilden.

K. Farrell expressed concern about how to implement “shall consider unique circumstances.” She noted that schools could end up in a due process hearing over this issue. She wondered how a school could document that it considered unique circumstances. She said that the wording should be amended, because it would be difficult to document to an Independent hearing officer that they did indeed follow this process. M. Johnson said that currently it is only documented if disciplinary action is taken. Discussion ensued with regard to “shall.” J. Swiss indicated that by changing it to “shall” you are moving to a more formalized, documented process, as compared to the current informal process that exists.

K. Farrell asked for current Motion.

D. Schmidt repeated the motion. K. Farrell called for question.

9 Approved; 6 Opposed; 0 Abstained.

511 IAC 44-1 (m). N. Brahm discussed changes and the language added by the federal regulations. M. Johnson motioned that we accept the language as written for subsections (m) (n) and (o). Seconded by R. Burden.

R. Burden asked whether the 10 day requirement would apply. N. Brahm said that the manifestation conference must take place within 10 instructional days. K. Farrell asked whether under subsection (n), the parent has to receive notification on that day. N. Brahm said that yes, on the date of the determination, the parents have to be notified and receive procedural safe guards. K. Farrell asked how you would notify the parent. Can it be sent home with the child so the parents will get them on the date of the determination? N. Brahm stated that the comments to the federal regulations do not add much guidance. Discussion ensued as to whether language could be changed.

M. Johnson called the question.

0 Approved; 16 Opposed; 0 Abstained.

Vote called for Language on (m) (n) and (o). S. Tilden suggested adding language requiring the school to make and document “reasonable efforts” to notify the parents. If the parents cannot be notified on the day of the decision, the school should mail notice on the next business day. R. Burden motioned to accept. N. Brahm said that she would add a new subsection (o) incorporating S. Tilden’s suggestion. J. Nally seconded.

K. Farrell called for the vote.

15 Approved; 0 Opposed; 0 Abstained.

ARTICLE 7 COMMENTS FROM THE PUBLIC

No comments were made.

OTHER BUSINESS

N. Brahm discussed the new Part B Application. The Division would like SAC to review the application and give comments to the Division.

MEETING ADJOURNED AT 2:50 P.M.